IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13117 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

JAYHIND AGRICO

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Appearance:

1. Special Civil Application No. 13117 of 1994

Mr. PD Bhate, AGP for Petitioner No. 1

MR SHIRISH JOSHI for Respondent No. 1

MR BN PATEL for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/12/2004

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution of India, the petitioner State of Gujarat has challenged the legality and validity of the award passed by the learned Arbitrator one Shri C.G. Rathod dated 25.5.1994.

2. The Industries Commissioner and Central Purchasing Officer, Government of Gujarat, invited tendrs for supply of goods. The respondent also filled in the tender and his offer was accepted. It appears that there was some dispute and considering the arbitration clause in the agreement he requested the State Government to refer the matter to an Arbitrator for deciding the dispute and the Industries Commissioner appointed one Shri CG Rathod as sole Arbitrator vide order dated 8.6.1987 which was approved by the State Government vide order dated 12th March 1991. During the pendency of dispute before the sole Arbitrator, Arbitration Tribunal came to be constituted to deal with dispute with regard to public works contract under the Act, namely Gujarat Public Works Contract Disputes Arbitration Tribunal Act, 1992, {"the Tribunal Act" for short} came into effect with effect from 1.1.1994. It is the case of the petitioner that considering Section 21 of the Tribunal Act all the matters pending with the Arbitrator, authority or Court were required to be transferred to the said Tribunal and inspite of that the learned Arbitrator Shri CG Rathod passed the award on 25.5.1994 and therefore considering Section 21 of the Tribunal Act the award passed by the Arbitrator, Shri C.G. Rathod dated 25.5.1994 is without jurisdiction.

3. This Court {Coram: Mr. N.N. Mathur, J. as he then was} admitted the present Special Civil Application on 26.9.1995 and execution and implementation of the award dated 25.5.1994 came to be stayed.

4. Today, when the matter is called out, Shri Bhate, learned AGP has submitted that the award passed by the learned Arbitrator is without jurisdiction as under the provisions of the Tribunal Act the Arbitrator had no jurisdiction to pass the award and decide the dispute on or after 1.1.1994, the date on which the Tribunal Act came into force. None appears on behalf of the respondents.

5. Considering the provisions of the Tribunal Act and also considering the fact that the judgment and award has been passed by the Arbitrator on 25.5.1994 the award passed by the learned Arbitrator is without jurisdiction. On the aforesaid Tribunal Act came into force with effect from 1.1.1994 the Arbitrator could not have passed the award and decided the dispute and thus the award passed by the Arbitrator dated 25.5.1994 is without jurisdiction. Even as observed by the learned Single Judge, vide order dated 26.9.1995, jurisdiction cannot be

conferred by either of the parties even by consent though the State Government might have given consent for appointment of Shri C.G. Rathod as Arbitrator.

6. For the reasons stated hereinabove, the petition succeeds. The award passed by the learned Arbitrator Shri CG Rathod dated 25.5.1994 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[ M.R. Shah, J. ]

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